

O/805/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003459582

BY CHARLES DEVENISH

TO REGISTER THE TRADE MARK:

COSMOS

IN CLASSES 6, 9, 17, 19, 37 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 421166

BY ODENWALD FASERPLATTENWERK GMBH

BACKGROUND AND PLEADINGS

1. On 20 January 2020, Charles Devenish (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 15 May 2020 and registration is sought for the goods and services set out in the Annex to this decision.¹

2. On 12 August 2020, Odenwald Faserplattenwerk GmbH (“the opponent”) partially opposed the application based upon sections 5(1), 5(2)(a) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against only those goods and services underlined in the Annex to this decision. The opponent relies upon EUTM no. 17938096 for the mark **COSMOS**, which was filed on 31 July 2018 and registered on 15 December 2018.² The opponent relies upon all goods for which the mark is registered, namely:

Class 19 Fibreboards for use in the construction of suspended ceilings.

3. Under section 5(1), the opponent claims that the marks and the goods/services are identical. Under section 5(2)(a), the opponent claims that the marks are identical and the goods/services are similar, resulting in a likelihood of confusion.

4. Under section 5(3), the opponent claims that it has a reputation for all goods for which its mark is registered and that use of the applicant’s mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or repute of the earlier mark.

¹ A Form TM21B was filed on 19 August 2021, adding the limitation “none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings” to the applied-for specification. However, the opponent confirmed that the limitation did not resolve the dispute and so the opposition proceeds against the amended specification as set out in the Annex to this decision.

² Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

5. The applicant filed a counterstatement admitting that the respective marks are identical, but denying the goods/services are identical or similar. The applicant denies the grounds of opposition.

6. The applicant is represented by Wilson Gunn and the opponent is represented by D Young & Co LLP. Only the opponent filed evidence. Neither party requested a hearing and only the applicant filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

7. The opponent filed evidence in the form of the witness statement of Maximilian Von Funck dated 31 March 2021, which is accompanied by 11 exhibits. Mr Von Funck is the Managing Director of the opponent, a position he has held since 2014.

8. The opponent's evidence was accompanied by written submissions dated 9 April 2021.

9. The applicant filed written submissions in lieu dated 19 August 2021.

10. Whilst I do not propose to summarise the evidence and submissions here, I have taken them into consideration and will refer to them below where necessary.

DECISION

Sections 5(1) and 5(2)(a)

11. The relevant sections of the Act state:

“(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(2) A trade mark shall not be registered if because –

(a) It is identical with an earlier trade mark and is to be registered for goods or service similar to those for which the earlier trade mark is protected,

[...]

there exists a likelihood of confusion on the part of the public, which includes the likelihood of associated with the earlier trade mark.”

12. Section 5A of the Act reads as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

13. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. The opponent’s mark had not completed its registration process more than 5 years before the filing date of the application in issue and is not, therefore, subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent can rely upon all of the goods it has identified.

14. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

15. The following principles are relevant to the assessment under section 5(2)(a) which can be gleaned from the decisions of the EU court in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode*

CV v Adidas AG & Adidas Benelux BV, Case C-425/98, Matratzen Concord GmbH v OHIM, Case C-3/03, Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Identity of the marks

16. As noted above, the applicant admits in its Form TM8 that the marks are identical. I agree. The marks are clearly identical and so the first hurdle of sections 5(1) and 5(2)(a) is satisfied.

Comparison of goods and services

17. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

18. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

19. As the only submissions I have from the applicant relate to the similarity of goods/services, I have reproduced them below:

“The Applicant denies that the goods/services of the application that have been opposed are identical or similar to the goods in class 19 listed above.

For the avoidance of doubt, we have filed a form TM21B making amendments to the goods/services of the application to confirm that the goods/services do not include the opponent’s goods.

The applicant’s goods/services and the opponent’s goods have completely different uses, users, nature and purpose. The trade channels and end

consumer for the respective goods/services are different. The goods/services and goods are not in competition.

The opponent's goods are specialist goods. Likewise, the applicant's goods/services are specialist goods/services. Each being provided to a specific market sector."

Class 6

Building and construction materials and elements of metal or principally of metal; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

20. The opponent's goods could plainly be categorised as being for use in construction, specifically in relation to the construction of ceilings. However, the applicant's specification has specifically been limited to exclude fibreboards used in the construction of suspended ceilings. Clearly, the goods are not identical. However, I recognise that there may still be some (albeit limited) overlap in nature to the extent that the applicant's goods could still include panels made of other materials. There may still be some overlap in purpose and method of use, given that the applicant's goods could include panels used in the construction of ceilings. I recognise that there may be some overlap in trade channels, as businesses that sell goods for ceiling construction made of fiberboard may also sell equivalent goods made of other materials (including metal). There will inevitably be overlap in user as both may be used by those involved in construction. I consider the goods to be similar to between a medium and high degree.

Panels including, side panels, over panels and armoured panels; all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

21. This term includes, specifically, side panels, over panels and armoured panels. However, the use of the word "including" does not limit the term to these types of

panels alone. Consequently, I consider that the same reasoning applies as outlined in paragraph **20** above and the goods are similar to between a medium and high degree.

Insulated panels; Panels [...]; all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

22. For the same reason as set out in paragraph **20** above, I consider it likely that there will be some overlap in nature, purpose, method of use, trade channels and user. Consequently, I consider these goods to be similar to between a medium and high degree.

Fire panels; soundproof panels [...]; all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

23. I consider that the same overlap in nature, method of use and user is likely to apply as outlined in paragraph **20** above. I recognise that the applicant's goods have a specific purpose (i.e. being for the prevention of fire/transmission of sound). However, there could still be some general overlap in purpose to the extent that both goods could be used in the construction of ceilings. I note from the opponent's evidence, that the opponent itself sells both general ceiling panels and panels with additional qualities (such as being fire proof or soundproof).³ Consequently, I consider it likely that there will be an overlap in trade channels. Taking all of this into account, I consider the goods to be similar to a medium degree.

Flood prevention panels; security panels; all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

24. I recognise that there may be some limited overlap in nature between these goods and the opponent's goods as both take the form of panels. There may also be an

³ Exhibit 4

overlap in user. However, I consider it unlikely that there will be any meaningful overlap in purpose or method of use as the applicant's goods seem, to me, unlikely to be used in the construction of ceilings. I recognise that the opponent produces humidity resistant ceiling panels, but ceiling panels which have a humidity resistant property cannot be said to fall within the category of flood prevention panels.⁴ These are very different. Similarly, I can see no reason why panels used for security/armouring purposes would be used in the construction of ceilings. In the absence of any evidence to the contrary, I see no reason to conclude that there would be any overlap in trade channels. I see no competition or complementarity.⁵ In my view, the limited overlap in nature and user alone is not sufficient to give rise to a finding of similarity and these goods are dissimilar. If I am wrong in this finding then any similarity will be very low.

Doors, gates, windows, window coverings, barriers, [...] shutters; sliding, concertina and bi-folding doors; door and window frames; glazed doors; screen doors; hydraulic vertical lifting doors; bars including window bars; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

25. In its written submissions, the opponent submits that these goods are likely to be made of fibreboards and will, therefore, overlap in nature with the opponent's goods. Further, given these goods are listed in class 6 they are all likely to be made of metal. Indeed, this is apparent from the specification itself. In any event, the specific forms in which the goods take clearly differ (with one being sheets in the form of panels and the other being in articles such as doors, windows etc). The opponent also submits that there is overlap in purpose, as the goods all provide separation between different areas. At a very general level, I accept that all of the goods form some sort of barrier. However, the applicant's goods take the form of barriers which are typically designed to be moveable to allow the passage of air/people, whereas the opponent's goods are used to permanently separate one floor from another. The opponent submits that there is likely to be overlap in trade channels. However, it seems likely to me that goods such as these are likely to be provided by specialist suppliers, which will differ from

⁴ Exhibit 9

⁵ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

the suppliers of the opponent's goods. In the absence of any evidence to the contrary, I see no point of overlap. I see no complementarity or competition. Taking all of this into account, I consider the goods to be dissimilar.

Fire doors, fire screens, fire shutters, fire barriers, fire gates; fire escape doors; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

26. The same findings will apply to these goods as outlined in paragraph **25** above. I recognise that both parties' goods include those with fire resistant properties. However, I do not consider that this alone creates any meaningful overlap. Consequently, I consider the goods to be dissimilar.

Flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention barriers; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

27. The same findings will apply to these goods as outlined in paragraph **25** above. However, these goods are even further removed as they have the specialist purpose of being for flood prevention. Consequently, I consider the goods to be dissimilar.

Security doors, security screens, security shutters, security gates, security barriers; armoured doors; bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors; barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti-crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid including manually operated or automated systems; [...] security screens; all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

28. The same findings will apply to these goods as outlined in paragraph **25** above. However, these goods are even further removed as they have the specific purpose of being for security. Consequently, I consider the goods to be dissimilar.

Soundproof doors, soundproof screens, soundproof barriers, soundproof windows; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

29. The same findings will apply to these goods as outlined in paragraph **25** above. I recognise that both parties have goods which may have soundproofing qualities, but I do not consider that this alone is sufficient to give rise to any meaningful overlap. Consequently, I consider the goods to be dissimilar.

Insulated doors, insulated shutters; cold storage doors; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

30. The same findings will apply to these goods as outlined in paragraph **25** above. I recognise that ceiling panels may also have insulating properties, but I do not consider that alone creates any meaningful overlap. Consequently, I consider the goods to be dissimilar.

Sluice gates; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

31. A sluice gate is a mechanism used to control waterflow. I see no point of overlap in purpose, method of use, trade channels or nature with the opponent's goods. I do not consider them to be in competition or complementary. Any overlap in user is insufficient to result in similarity. I consider the goods to be dissimilar.

Marine doors and gates; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

32. The same findings will apply to these goods as outlined in paragraph **25** above. However, these goods are even further removed as they have the specialist purpose of being for use in ships and other marine vessels. Consequently, I consider the goods to be dissimilar.

Street furniture including benches, planters and seating; [...] all of the aforesaid being of metal or principally of metal; [...] none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

33. These goods are used in populated areas for functionality and aesthetics. I see no overlap in purpose with the opponent's goods. Similarly, there is unlikely to be any overlap in nature or method of use. The trade channels for these goods are unlikely to overlap and there is no evidence to suggest that the same undertakings are likely to be responsible for these goods and the opponent's goods. I see no point of competition or complementarity. There is, in my view, unlikely to be any substantial overlap in user, but even if there is, that is not enough on its own for a finding of similarity. I consider the goods to be dissimilar.

Parts and fittings for the aforesaid;

34. To the extent that I have found similarity for the goods above, the parts and fittings associated with those goods will also be similar to the opponent's goods. However, where I have found the above goods to be dissimilar, the related parts and fittings will also be dissimilar.

Class 17

Insulation and barrier articles; fire resistant and fire preventive articles and materials; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

35. The words “articles” and “materials” in these terms could cover a broad range of goods. However, given that these goods have been listed in class 17, this is unlikely to include goods in the nature of panels for construction purposes. I do not consider that these goods would share any meaningful overlap in nature, purpose or method of use with the applicant’s goods. I see no reason to conclude that there would be an overlap in trade channels, absent any evidence. There is no obvious competition or complementarity. Taking all of this into account, I consider the goods to be dissimilar.

Safety curtains; smoke curtains; fire curtains including asbestos fire curtains; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

36. These goods clearly differ in nature with the applicant’s goods, as the applicant’s goods are curtains and the opponent’s goods are panels (meaning they are likely to be made from different materials). The method of use and purpose also clearly differs. I recognise that the opponent’s goods may include panels with fire resistant properties, but I do not consider that alone to create any meaningful overlap. I see no reason to conclude that there is an overlap in trade channels, absent any evidence. There is no competition or complementarity. I consider the goods to be dissimilar.

Class 19

Building and construction elements not of metal; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

37. For the same reasons set out in paragraph **20** above, I consider these goods to be similar to the opponent’s goods to between a medium and high degree.

Panels [...]; Insulated panels; panels including, side panels, over panels and armoured panels; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

38. For the same reasons set out in paragraphs **20 to 22** above, I consider these goods to be similar to the opponent's goods to between a medium and high degree.

Fire panels; soundproof panels; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

39. For the same reasons set out in paragraph **23** above, I consider the goods to be similar to the opponent's goods to a medium degree.

Flood prevention panels; security panels; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

40. For the same reasons set out in paragraph **24** above, I consider the goods to be dissimilar. If I am wrong in this finding, then the goods are similar to only a very low degree.

Doors, gates, windows, window coverings, barriers, [...] shutters; fire doors, fire screens, fire shutters, [...] fire barriers. fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, [...] flood prevention barriers: security doors, security screens, security shutters, security gates, [...] security barriers; soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows: insulated doors. [...] insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; door and Window frames; glazed doors; fire escape doors; armoured doors: bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors: screen doors: barriers Including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti- crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid Including manually operated or automated systems; bars including window bars; security screens; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

41. The same findings apply to these goods as set out in paragraphs **25 to 30** above. I consider the goods to be dissimilar.

Sluice gates; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

42. The same findings apply to these goods as set out in paragraph **31** above. I consider the goods to be dissimilar.

Parts and fittings for the aforesaid;

43. The same findings apply to these goods as set out in paragraph **34** above.

Class 37

Installation, cleaning, repair and maintenance services for panels, [...] soundproof panels, insulated panels, panels including, side panels, over panels and armoured panels; none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

44. As the opponent is relying upon goods, there will clearly be no overlap in nature with the applicant's services. I also do not consider that there will be any overlap in purpose or method of use. There will inevitably be an overlap in user. I recognise that the same businesses that supply panels might also be involved in their installation and maintenance. Consequently, I consider it likely that there will be an overlap in trade channels. I also recognise that there may be some complementarity between the goods and services. Taking this into account, I consider the goods and services to be similar to a low degree.

Installation, cleaning, repair and maintenance services for security panels, soundproof screens, soundproof barriers; none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

45. For the same reasons, there will be no overlap in nature, method of use or purpose. I have already explained above that, given the goods to which these services relate are specialist goods with a very specific purpose, I consider it unlikely that there will be overlap in trade channels with the opponent's goods. For the same reason, I do not consider that there will be an overlap in trade channels with these services. The average consumer would have no reason to conclude that these originate from the same undertaking and so there can be no complementarity. Given the differing nature and purpose of the goods and services, there will be no competition. I consider the goods and services to be dissimilar.

Class 42

Design services relating to [...] fire panels, soundproof panels, insulated panels, panels including, side panels, over panels and armoured panels; none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

46. I recognise that businesses that design panels for use in construction of ceilings may also supply those panels to the end user or trade. Consequently, I consider that the same overlap in trade channels will apply between these goods and services as identified above. For the same reasons, there will be complementarity. I do not consider there to be any overlap in nature, method of use or purpose, although there will inevitably be overlap in user. Taking all of this into account, I consider the goods and services to be similar to a low degree.

Design services relating to [...] security panels, soundproof screens, soundproof barriers; none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

47. For the same reasons set out in paragraph **45** above, I see no reason to conclude that the same overlap in trade channels or complementarity applies to these services. Consequently, I consider the goods and services to be dissimilar.

48. Section 5(1) requires that the goods and services be identical. As I have found no identity between the goods and services, the opposition based upon section 5(1) of the Act must fail in its entirety.

49. Section 5(2)(a) only requires the goods and services to be similar. For those goods and services that I have found to be dissimilar, there can be no likelihood of confusion. I will, therefore, now turn to consider the global assessment in relation to only those goods and services that I have found to share some similarity with the opponent's goods.

The average consumer and the nature of the purchasing act

50. As the case law above indicates, it is necessary for me to determine who the average consumer is for the parties' respective goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

51. The average consumer for the goods and services is likely to be a professional user, although I recognise that some may be purchased by members of the general public. The goods are likely to be reasonably infrequent purchases but are unlikely to be extremely expensive. In my view, various factors are likely to be taken into account in relation to the goods such as quality, durability and materials. Similarly, for the services, factors such as experience, reliability and cost are likely to be taken into account. Consequently, I consider that a medium degree of attention is likely to be

paid during the purchasing process. However, where there is a safety element to the goods and services (such as fire protection) I recognise that the level of attention paid may be higher than medium.

52. The goods are likely to be purchased by self-selection from the shelves of a retail outlet or their online equivalent. The services are likely to be purchased following perusal of signage on premises frontage and websites or following perusal of adverts (either in hard copy or online). Taking all of this into account, I consider the purchasing process to be predominantly visual. However, I do not discount that there may be an aural component to the purchase of the goods and services given that word-of-mouth recommendations may be made or orders may be placed by telephone.

Distinctive character of the earlier trade mark

53. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

54. Registered trade marks possess varying degrees of inherent distinctive character ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words with no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

55. Mr Von Funck gives evidence that the opponent began using the earlier mark in the UK over 20 years ago. Examples of the opponent’s brochures dating back to 2004 have been provided which show use of the earlier mark in relation to ceiling tiles.⁶ Mr Von Funck explains that the opponent trades through a subsidiary in the UK. Invoices have been provided (amounts redacted) which show consistent sales of goods, with the earlier mark contained in the product description, addressed to retailers based in Northampton, Leeds, Sheffield, Southampton and Birmingham between 2016 and 2020.⁷ A series of earlier invoices show that the opponent’s subsidiary has been selling COSMOS goods in the UK since at least 2001.⁸ Examples of quotes to customers for products sold under the earlier mark have also been provided.⁹ However, only one is dated prior to the relevant date, which is addressed to a business in Newcastle.

56. Mr Von Funck confirms that the opponent’s UK subsidiary attended the UK Interiors trade body conference in Manchester in 2019. Mr Von Funck explains that this is the main annual event for the UK ceilings industry.¹⁰ He also gives evidence that the opponent’s UK subsidiary has distributed approximately 2000 hard copies of a brochure regarding fire resistant ceilings in the UK in the past three years. However, I note that there only appears to be one very small reference to the earlier mark in that

⁶ Exhibit 5

⁷ Exhibit 6

⁸ Exhibit 10

⁹ Exhibit 8

¹⁰ Exhibit 7

brochure. The opponent has supplied businesses including McCarthy & Stone and TK Maxx.¹¹

57. The opponent won an award in 2002 for its COSMOS branded products.¹² Mr Von Funck explains that this award is given to products that have proved themselves in their own market for a minimum of 8 years. This is described in the opponent's press release about the award as "a top European honour for building materials, after sales have reached nearly 200 MILLION since it was launched".

58. Mr Von Funck has provided the following sales figures for COSMOS products sold in the UK:

2016	In excess of £200,000
2017	In excess of £200,000
2018	In excess of £200,000
2019	In excess of £100,000

59. The relevant market for assessing enhanced distinctiveness is the UK market. No market share information has been provided. I recognise that the invoices show a good geographical spread across the UK in terms of the opponent's customer base. Although the sales figures provided above are not insignificant, I consider it unlikely that this represents a particularly significant market share in what must be a reasonably large market. Although the opponent has provided evidence regarding its promotional activities at a trade event and the distribution of catalogues, no overall advertising and promotional spend figures have been provided. Taking all of this into account, I am not satisfied that the opponent has demonstrated that the earlier mark has acquired enhanced distinctive character through use prior to the relevant date.

60. I have, therefore, only the inherent position to consider. The word COSMOS is an ordinary dictionary word referring to the universe.¹³ It is neither descriptive nor allusive

¹¹ Exhibit 11

¹² Exhibit 9

¹³ <https://www.collinsdictionary.com/dictionary/english/cosmos>

of the goods relied upon. Consequently, I consider the earlier mark to be inherently distinctive to a medium degree.

Likelihood of confusion

61. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

62. I have found the marks to be identical. I have found the earlier mark to be inherently distinctive to a medium degree. I have found the average consumer for the goods and services to be a professional user or a member of the public, who will purchase the goods and services predominantly by visual means (although I do not discount an aural component). I have concluded that a medium degree of attention will be paid during the purchasing process for most of the goods and services, although I recognise that this may be higher where certain safety issues are relevant. I have found the goods and services to vary from being similar to a very low degree to similar to between a medium and high degree, except for those that I have found to be dissimilar.

63. Given the identity of the marks, and bearing in mind the interdependency principle, I consider that there is a likelihood of the marks being mistakenly recalled or misremembered for each other where they are used on goods and services that are

similar to at least a low degree. Consequently, I consider there to be a likelihood of direct confusion in relation to those goods and services that I have found to be similar to a low degree or higher. As noted above, for those goods and services that I have found to be dissimilar, there can be no likelihood of confusion. Where there is only a very low degree of similarity between the goods and services, I consider this distance will be sufficient to offset the identity of the marks and avoid a likelihood of direct or indirect confusion.

64. The opposition based upon section 5(2)(a) succeeds in relation to the following goods and services:

Class 6 Building and construction materials and elements of metal or principally of metal; panels; [...] fire panels, [...] soundproof panels, [...] insulated panels; panels including, side panels, over panels and armoured panels; parts and fittings for the aforesaid; all of the aforesaid being of metal or principally of metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 19 Building and construction elements not of metal; panels; [...] fire panels, [...] soundproof panels, [...] Insulated panels; panels including, side panels, over panels and armoured panels; parts and fittings for the aforesaid; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 37 Installation, cleaning, repair and maintenance services for panels, [...] soundproof panels, [...] insulated panels, panels including, side panels, over panels and armoured panels, none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

Class 42 Design services relating to fire panels, [...] soundproof panels, insulated panels [...] panels including, side panels, over panels and armoured panels, none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

65. The opposition based upon section 5(2)(a) fails in relation to the following goods and services:

Class 6 Doors, gates, windows, window coverings, barriers, [...] and shutters; fire doors, fire screens, fire shutters, [...] fire barriers, fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers; security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows; insulated doors, [...] insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door and window frames; glazed doors; fire escape doors; armoured doors; bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors; screen doors; hydraulic vertical lifting doors; barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti-crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid including manually operated or automated systems; street furniture including benches, planters and seating; parts and fittings for the aforesaid; bars including window bars; security screens; all of the aforesaid being of metal or principally of metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 17 Insulation and barrier articles; fire resistant and fire preventive articles and materials; safety curtains; smoke curtains; fire curtains including asbestos fire curtains; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 19 Doors, gates, windows, window coverings, barriers, [...] and shutters; fire doors, fire screens, fire shutters, [...] fire barriers. fire gates; flood

prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers: security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows: insulated doors. [...] insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door and Window frames; glazed doors; fire escape doors; armoured doors: bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors: screen doors: barriers Including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti- crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid Including manually operated or automated systems; parts and fittings for the aforesaid; bars including window bars; security screens; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 37 Installation, cleaning, repair and maintenance services for [...] security panels, soundproof screens, [...] soundproof barriers, none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

Class 42 Design services relating to [...] security panels, soundproof screens, [...] soundproof barriers, none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

Section 5(3)

66. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

67. As noted above, by virtue of its earlier filing date the opponent’s mark qualifies as an earlier mark pursuant to section 6 of the Act. As the earlier mark is not subject to proof of use, the opponent can rely upon all of the goods identified.

68. I bear in mind the relevant case law set out in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora*. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier mark is similar to the applicant’s mark. Secondly, the opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Fourthly, assuming that the first three conditions are met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

69. The relevant date for the purposes of my assessment is the date of the application i.e. 20 January 2020.

70. The earlier mark is an EUTM and so the relevant market for assessing reputation is the EU market. I have summarised the opponent’s evidence of use above. The only sales figures provided are those that relate to goods sold in the UK and, for the reasons set out above, I do not consider that these represent a significant market share. I have

some limited information about the opponent's promotional activities in the UK (such as attendance at a trade show and distribution of brochures) but no overall advertising spend information has been provided. I have no information about the wider EU market. I accept that the geographical spread of use in the UK is good. Whilst I note that the opponent has stores in a number of EU locations, I have no information about whether or the extent to which goods under the earlier mark have been sold in those countries.¹⁴ I recognise that the opponent has won a European award, although this was several years ago. I also recognise that the opponent describes its sales under the COSMOS brand as reaching nearly "200 million" since it was first launched. I have no information about what jurisdiction these sales were made in. Taking the evidence as a whole into account, I do not consider it sufficient to establish a reputation for the goods in the EU.

71. Consequently, the opposition based upon section 5(3) fails.

72. For the avoidance of doubt and in any event, I do not consider that this ground of opposition would have put the opponent in any stronger position than it is under section 5(2)(a). I recognise that similarity of goods and services is not necessary under section 5(3), but it is a relevant factor. In my view, the distance between the goods and services that I have found to be dissimilar/similar to only a very low degree would offset the identity of the marks and any reputation held by the opponent.

CONCLUSION

73. The opposition is partially successful in relation to the following goods and services:

Class 6 Building and construction materials and elements of metal or principally of metal; panels; [...] fire panels, [...] soundproof panels, [...] insulated panels; panels including, side panels, over panels and armoured panels; parts and fittings for the aforesaid; all of the aforesaid being of metal or

¹⁴ Exhibit 3

principally of metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 19 Building and construction elements not of metal; panels; [...] fire panels, [...] soundproof panels, [...] Insulated panels; panels including, side panels, over panels and armoured panels; parts and fittings for the aforesaid; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 37 Installation, cleaning, repair and maintenance services for panels, [...] soundproof panels, [...] insulated panels, panels including, side panels, over panels and armoured panels, none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

Class 42 Design services relating to fire panels, [...] soundproof panels, insulated panels [...] panels including, side panels, over panels and armoured panels, none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

74. The application can, therefore, proceed to registration for the following goods and services in relation to which the opposition was unsuccessful or against which the opposition was not directed:

Class 6 Doors, gates, windows, window coverings, barriers, [...] and shutters; fire doors, fire screens, fire shutters, [...] fire barriers, fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers; security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows; insulated doors, [...] insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door and window frames; glazed doors; fire escape doors; armoured doors; bullet proof doors; crash proof doors and

gates; blast proof doors; pressure resistant doors; screen doors; hydraulic vertical lifting doors; barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti-crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid including manually operated or automated systems; street furniture including benches, planters and seating; parts and fittings for the aforesaid; louvres; vents including security vents; grills for safety purposes including security, ventilation, retractable and fixed grills; and ventilation grilles for fitting in doors and gates; bars including window bars; security screens; fencing; security fencing; soundproof fencing; shelters; smoking shelters; cycle shelters; cycle lock-ups; cycle lockers (for accessories); cycle racks; all of the aforesaid being of metal or principally of metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 9 Safety, security, protection and signalling devices; alarms and warning equipment; access control devices; protective and safety equipment; electronic access control systems for doors, gates, barriers, and shutters; electronic locks; automatic electronically operated locks; automatic electronically operated security barriers; access security apparatus (automatic); security systems; security alarm systems (other than for vehicles); access security apparatus (electric-); security warning apparatus; access security apparatus (automatic); security surveillance apparatus; keypads for security alarms; control panels for security alarms; automatic door, gate, bollard and barrier systems; motion sensors for security lights; microwave detectors for perimeter protection; security apparatus; traffic and personnel electronic access control apparatus; automatic electronically operated shutters; automatic electronically operated doors; automatic electronically operated gates; automatic electronically operated barriers; automatic electronically operated bollards; automatic electronically operated security doors;

automatic electronically operated security gates; automatic electronically operated security shutters; automatic electronically operated security barriers; electric fences; remote control apparatus for opening and closing doors and gates; keypads for security alarms; control panels for fire shutters and fire curtains; systems for the deployment of fire curtains when triggered by smoke or fire sensors or alarms; security surveillance apparatus; computer software; and, security cameras; predictive maintenance software, electronic apparatus and equipment.

Class 17 Insulation and barrier articles; fire resistant and fire preventive articles and materials; safety curtains; smoke curtains; fire curtains including asbestos fire curtains; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 19 Doors, gates, windows, window coverings, barriers, [...] and shutters; fire doors, fire screens, fire shutters, [...] fire barriers. fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers: security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows: insulated doors. [...] insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door and Window frames; glazed doors; fire escape doors; armoured doors: bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors: screen doors: barriers Including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti- crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid Including manually operated or automated systems; parts and fittings for the aforesaid; louvres; vents including security vents; grills for safety purposes including security, ventilation, retractable and fixed grills; and ventilation grilles for fitting In doors and gates; bars including window

bars; security screens; fencing; security fencing; soundproof fencing; shelters; smoking shelters; cycle shelters; cycle lock-ups; cycle racks; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 37 Installation, cleaning, repair and maintenance services for doors, gates, windows, window coverings, barriers, [...] and shutters, fire doors, fire screens, fire shutters, fire panels, fire barriers, fire gates, flood prevention doors, flood prevention screens, flood prevention shutters, flood prevention gates, flood prevention panels, flood prevention barriers, security doors, security screens, security shutters, security gates, security panels, security barriers, soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows, insulated doors, [...] insulated shutters, dock levellers for warehouses, cold storage doors, sliding doors, concertina doors and bi-folding doors, sluice gates, door and window frames, glazed doors, fire escape doors, armoured doors, bullet proof doors, crash proof doors and gates, blast proof doors, pressure resistant doors, hydraulic vertical lifting doors, screen doors, barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers, anti-crash barriers, rising barriers, bollards including security bollards and automated bollards, rising bollards, marine doors and gates, harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, street furniture including benches, planters and seating, parts and fittings for the aforesaid, all of the aforesaid including manually operated or automated systems, louvres, vents including security vents, grills for safety purposes including security, ventilation, retractable and fixed grills, and ventilation grilles for fitting in doors and gates, bars including window bars, security screens, fencing, soundproof fencing, security fencing, shelters, smoking shelters, cycle shelters, cycle stands, cycle lock-ups, cycle lockers (for accessories), cycle racks, insulation and barrier articles and materials, fire resistant and fire preventive articles and materials, safety curtains, smoke curtains, fire curtains including asbestos fire curtains, systems for the deployment of fire curtains when triggered by

smoke or fire sensors or alarms, safety, security, protection and signalling devices, alarms and warning equipment, access control devices, protective and safety equipment, electronic access control systems for doors, gates, barriers, and shutters, electronic locks, automatic electronically operated locks, automatic electronically operated security barriers, access security apparatus (automatic), security systems, security alarm systems (other than for vehicles), access security apparatus (electric-), security warning apparatus, access security apparatus (automatic), security surveillance apparatus, keypads for security alarms, control panels for security alarms, automatic door, gate, bollard and barrier systems, motion sensors for security lights, microwave detectors for perimeter protection, security apparatus, traffic and personnel electronic access control apparatus, automatic electronically operated shutters, automatic electronically operated doors, automatic electronically operated gates, automatic electronically operated barriers, automatic electronically operated bollards, automatic electronically operated security doors, automatic electronically operated security gates, automatic electronically operated security shutters, automatic electronically operated security barriers, electric fences, remote control apparatus for opening and closing doors and gates, keypads for security alarms, control panels for fire shutters and fire curtains, security surveillance apparatus, computer software and, security cameras, coating services including powder coatings; none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

Class 42 Design services: Design services relating to doors, gates, windows, window coverings, barriers, panels and shutters, fire doors, fire screens, fire shutters, [...] fire barriers, fire gates, flood prevention doors, flood prevention screens, flood prevention shutters, flood prevention gates, flood prevention panels, flood prevention barriers, security doors, security screens, security shutters, security gates, security panels, security barriers, soundproof doors, soundproof screens, [...] soundproof barriers, soundproof windows, insulated doors, [...] insulated

shutters, dock levellers for warehouses, cold storage doors, sliding doors, concertina doors and bi-folding doors, sluice gates, door and window frames, glazed doors, fire escape doors, armoured doors, bullet proof doors, crash proof doors and gates, blast proof doors, pressure resistant doors, hydraulic vertical lifting doors, screen doors, barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers, anti-crash barriers, rising barriers, bollards including security bollards and automated bollards, rising bollards, harmful vehicle mitigation products namely rising arm barriers, anti-crash barriers, rising bollards and road blockers, marine doors and gates, all of the aforesaid including manually operated or automated systems, street furniture including benches, planters and seating, parts and fittings for the aforesaid, louvres, vents including security vents, grills for safety purposes including security, ventilation, retractable and fixed grills, and ventilation grilles for fitting in doors and gates, bars including window bars, security screens, fencing, soundproof fencing, security fencing, shelters, smoking shelters, cycle shelters, cycle stands, cycle lock-ups, cycle lockers (for accessories), cycle racks, insulation and barrier articles and materials, fire resistant and fire preventive articles and materials, safety curtains, smoke curtains, fire curtains including asbestos fire curtains, systems for the deployment of fire curtains when triggered by smoke or fire sensors or alarms, safety, security, protection and signalling devices, alarms and warning equipment, access control devices, protective and safety equipment, electronic access control systems for doors, gates, barriers, and shutters, electronic locks, automatic electronically operated locks, automatic electronically operated security barriers, access security apparatus (automatic), security systems, security alarm systems (other than for vehicles), access security apparatus (electric-), security warning apparatus, access security apparatus (automatic), security surveillance apparatus, keypads for security alarms, control panels for security alarms, automatic door, gate, bollard and barrier systems, motion sensors for security lights, microwave detectors for perimeter protection, security apparatus, traffic and personnel electronic access control apparatus,

automatic electronically operated shutters, automatic electronically operated doors, automatic electronically operated gates, automatic electronically operated barriers, automatic electronically operated bollards, automatic electronically operated security doors, automatic electronically operated security gates, automatic electronically operated security shutters, automatic electronically operated security barriers, electric fences, remote control apparatus for opening and closing doors and gates, keypads for security alarms, control panels for fire shutters and fire curtains, security surveillance apparatus, computer software and, security cameras, coating services including powder coatings; none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.

COSTS

75. The applicant has enjoyed the greater degree of success and is entitled to a contribution towards his costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £1,150, calculated as follows:

Considering the Notice of opposition and filing a counterstatement	£300
Considering the opponent's evidence	£500
Preparing written submissions in lieu	£350
Total	£1,150

76. I therefore order Odenwald Faserplattenwerk GmbH to pay Charles Devenish the sum of £1,150. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 29th day of October 2021

S WILSON

For the Registrar

ANNEX

Class 6

Building and construction materials and elements of metal or principally of metal; doors, gates, windows, window coverings, barriers, panels and shutters; fire doors, fire screens, fire shutters, fire panels, fire barriers, fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers; security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, soundproof panels, soundproof barriers, soundproof windows; insulated doors, insulated panels, insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door and window frames; panels including, side panels, over panels and armoured panels; glazed doors; fire escape doors; armoured doors; bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors; screen doors; hydraulic vertical lifting doors; barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti-crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid including manually operated or automated systems; street furniture including benches, planters and seating; parts and fittings for the aforesaid; louvres; vents including security vents; grills for safety purposes including security, ventilation, retractable and fixed grills; and ventilation grilles for fitting in doors and gates; bars including window bars; security screens; fencing; security fencing; soundproof fencing; shelters; smoking shelters; cycle shelters; cycle lock-ups; cycle lockers (for accessories); cycle racks; all of the aforesaid being of metal or principally of metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 9

Safety, security, protection and signalling devices; alarms and warning equipment; access control devices; protective and safety equipment; electronic access control

systems for doors, gates, barriers, and shutters; electronic locks; automatic electronically operated locks; automatic electronically operated security barriers; access security apparatus (automatic); security systems; security alarm systems (other than for vehicles); access security apparatus (electric-); security warning apparatus; access security apparatus (automatic); security surveillance apparatus; keypads for security alarms; control panels for security alarms; automatic door, gate, bollard and barrier systems; motion sensors for security lights; microwave detectors for perimeter protection; security apparatus; traffic and personnel electronic access control apparatus; automatic electronically operated shutters; automatic electronically operated doors; automatic electronically operated gates; automatic electronically operated barriers; automatic electronically operated bollards; automatic electronically operated security doors; automatic electronically operated security gates; automatic electronically operated security shutters; automatic electronically operated security barriers; electric fences; remote control apparatus for opening and closing doors and gates; keypads for security alarms; control panels for fire shutters and fire curtains; systems for the deployment of fire curtains when triggered by smoke or fire sensors or alarms; security surveillance apparatus; computer software; and, security cameras; predictive maintenance software, electronic apparatus and equipment.

Class 17

Insulation and barrier articles; fire resistant and fire preventive articles and materials; safety curtains; smoke curtains; fire curtains including asbestos fire curtains; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 19

Building and construction elements not of metal; doors, gates, windows, window coverings, barriers, panels and shutters; fire doors, fire screens, fire shutters, fire panels, fire barriers, fire gates; flood prevention doors, flood prevention screens, flood prevention shutters; flood prevention gates, flood prevention panels, flood prevention barriers; security doors, security screens, security shutters, security gates, security panels, security barriers; soundproof doors, soundproof screens, soundproof panels, soundproof barriers, soundproof windows; insulated doors, insulated panels, insulated shutters; cold storage doors; sliding, concertina and bi-folding doors; sluice gates; door

and Window frames; panels including, side panels, over panels and armoured panels; glazed doors; fire escape doors; armoured doors: bullet proof doors; crash proof doors and gates; blast proof doors; pressure resistant doors: screen doors: barriers Including rising arm barriers, security barriers, crash barriers and crash proof barriers; anti-crash barriers; rising barriers; bollards including security bollards and automated bollards; rising bollards; marine doors and gates; harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, all of the aforesaid Including manually operated or automated systems; parts and fittings for the aforesaid; louvres; vents including security vents; grills for safety purposes including security, ventilation, retractable and fixed grills; and ventilation grilles for fitting In doors and gates; bars including window bars; security screens; fencing; security fencing; soundproof fencing; shelters; smoking shelters; cycle shelters; cycle lock-ups; cycle racks; all of the aforesaid being non-metal; none of the aforementioned goods being fibreboards for use in the construction of suspended ceilings.

Class 37

Installation, cleaning, repair and maintenance services for doors, gates, windows, window coverings, barriers, panels and shutters, fire doors, fire screens, fire shutters, fire panels, fire barriers, fire gates, flood prevention doors, flood prevention screens, flood prevention shutters, flood prevention gates, flood prevention panels, flood prevention barriers, security doors, security screens, security shutters, security gates, security panels, security barriers, soundproof doors, soundproof screens, soundproof panels, soundproof barriers, soundproof windows, insulated doors, insulated panels, insulated shutters, dock levellers for warehouses, cold storage doors, sliding doors, concertina doors and bi-folding doors, sluice gates, door and window frames, panels including, side panels, over panels and armoured panels, glazed doors, fire escape doors, armoured doors, bullet proof doors, crash proof doors and gates, blast proof doors, pressure resistant doors, hydraulic vertical lifting doors, screen doors, barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers, anti-crash barriers, rising barriers, bollards including security bollards and automated bollards, rising bollards, marine doors and gates, harmful vehicle mitigation products namely rising arm barriers, rising bollards and road blockers, street furniture including benches, planters and seating, parts and fittings for the aforesaid, all of the aforesaid including manually operated or automated systems, louvres, vents including security

vents, grills for safety purposes including security, ventilation, retractable and fixed grills, and ventilation grilles for fitting in doors and gates, bars including window bars, security screens, fencing, soundproof fencing, security fencing, shelters, smoking shelters, cycle shelters, cycle stands, cycle lock-ups, cycle lockers (for accessories), cycle racks, insulation and barrier articles and materials, fire resistant and fire preventive articles and materials, safety curtains, smoke curtains, fire curtains including asbestos fire curtains, systems for the deployment of fire curtains when triggered by smoke or fire sensors or alarms, safety, security, protection and signalling devices, alarms and warning equipment, access control devices, protective and safety equipment, electronic access control systems for doors, gates, barriers, and shutters, electronic locks, automatic electronically operated locks, automatic electronically operated security barriers, access security apparatus (automatic), security systems, security alarm systems (other than for vehicles), access security apparatus (electric-), security warning apparatus, access security apparatus (automatic), security surveillance apparatus, keypads for security alarms, control panels for security alarms, automatic door, gate, bollard and barrier systems, motion sensors for security lights, microwave detectors for perimeter protection, security apparatus, traffic and personnel electronic access control apparatus, automatic electronically operated shutters, automatic electronically operated doors, automatic electronically operated gates, automatic electronically operated barriers, automatic electronically operated bollards, automatic electronically operated security doors, automatic electronically operated security gates, automatic electronically operated security shutters, automatic electronically operated security barriers, electric fences, remote control apparatus for opening and closing doors and gates, keypads for security alarms, control panels for fire shutters and fire curtains, security surveillance apparatus, computer software and, security cameras, coating services including powder coatings; none of the aforementioned services being for fibreboards for use in the construction of suspended ceilings.

Class 42

Design services: design services relating to doors, gates, windows, window coverings, barriers, panels and shutters, fire doors, fire screens, fire shutters, fire panels, fire barriers, fire gates, flood prevention doors, flood prevention screens, flood prevention shutters, flood prevention gates, flood prevention panels, flood prevention barriers,

security doors, security screens, security shutters, security gates, security panels, security barriers, soundproof doors, soundproof screens, soundproof panels, soundproof barriers, soundproof windows, insulated doors, insulated panels, insulated shutters, dock levellers for warehouses, cold storage doors, sliding doors, concertina doors and bi-folding doors, sluice gates, door and window frames, panels including, side panels, over panels and armoured panels, glazed doors, fire escape doors, armoured doors, bullet proof doors, crash proof doors and gates, blast proof doors, pressure resistant doors, hydraulic vertical lifting doors, screen doors, barriers including rising arm barriers, security barriers, crash barriers and crash proof barriers, anti-crash barriers, rising barriers, bollards including security bollards and automated bollards, rising bollards, harmful vehicle mitigation products namely rising arm barriers, anti-crash barriers, rising bollards and road blockers, marine doors and gates, all of the aforesaid including manually operated or automated systems, street furniture including benches, planters and seating, parts and fittings for the aforesaid, louvres, vents including security vents, grills for safety purposes including security, ventilation, retractable and fixed grills, and ventilation grilles for fitting in doors and gates, bars including window bars, security screens, fencing, soundproof fencing, security fencing, shelters, smoking shelters, cycle shelters, cycle stands, cycle lock-ups, cycle lockers (for accessories), cycle racks, insulation and barrier articles and materials, fire resistant and fire preventive articles and materials, safety curtains, smoke curtains, fire curtains including asbestos fire curtains, systems for the deployment of fire curtains when triggered by smoke or fire sensors or alarms, safety, security, protection and signalling devices, alarms and warning equipment, access control devices, protective and safety equipment, electronic access control systems for doors, gates, barriers, and shutters, electronic locks, automatic electronically operated locks, automatic electronically operated security barriers, access security apparatus (automatic), security systems, security alarm systems (other than for vehicles), access security apparatus (electric-), security warning apparatus, access security apparatus (automatic), security surveillance apparatus, keypads for security alarms, control panels for security alarms, automatic door, gate, bollard and barrier systems, motion sensors for security lights, microwave detectors for perimeter protection, security apparatus, traffic and personnel electronic access control apparatus, automatic electronically operated shutters, automatic electronically operated doors, automatic electronically operated gates, automatic electronically operated barriers, automatic

electronically operated bollards, automatic electronically operated security doors, automatic electronically operated security gates, automatic electronically operated security shutters, automatic electronically operated security barriers, electric fences, remote control apparatus for opening and closing doors and gates, keypads for security alarms, control panels for fire shutters and fire curtains, security surveillance apparatus, computer software and, security cameras, coating services including powder coatings; none of the aforementioned services relating to fibreboards for use in the construction of suspended ceilings.